



BAC 7710-FW-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3000

[Docket No. RM2017-4; Order No. 4178]

Supplemental Standards of Ethical Conduct

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission revises its existing ethics rules to replace those duplicative rules with rules that reflect the Commission's current regulatory role under the Postal Accountability and Enhancement Act.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Background

III. Comments

IV. Commission Analysis

V. Ordering Paragraphs

I. Introduction

On May 24, 2017, the Postal Regulatory Commission (Commission) issued a notice of proposed rulemaking to amend the Commission's ethics rules, 39 CFR subpart A of part 3000.¹ On the same day, with the concurrence of the Office of Government Ethics (OGE), the Commission also issued a notice of proposed rulemaking to amend the supplemental standards of ethical conduct, 5 CFR part 5601, applicable to Commission employees.²

Executive branch employees are subject to multiple federal ethics laws, regulations issued by OGE, and executive orders. Because existing 39 CFR subpart A of part 3000 contains several rules that are duplicative of rules contained in 5 CFR part 2638 and 5 CFR part 5601, as amended, the Commission will revise existing 39 CFR subpart A of part 3000. The Commission will replace those duplicative rules with rules that reflect the Commission's current regulatory role under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006). The revised

¹ 82 FR 23766 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Notice of Proposed Rulemaking on Amendments to Ethics Rules, May 19, 2017 (Order No. 3907).

² 82 FR 23758 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Order No. 3906, Notice of Proposed Rulemaking on Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, May 19, 2017.

rules will treat employees' and former employees' interactions with the Postal Service substantially the same as if those interactions were with entities that are not part of the federal government.

II. Background

The ethics rules contained in 39 CFR subpart A of part 3000 were adopted in a 1971 rulemaking, in which the Civil Service Commission promulgated employee conduct regulations on the Commission's behalf. 36 FR 5412 (Mar. 23, 1971). In 1993, the Commission collaborated with OGE to revise the Commission's ethics rules in 39 CFR subpart A of part 3000. 58 FR 42873, 42874 (Aug. 12, 1993). The Commission amended the ethics rules in 2001 to eliminate a redundant provision. 66 FR 32544, 32545 (Jun. 15, 2001).

In 2006, the PAEA changed the agency's name from the Postal Rate Commission to the Postal Regulatory Commission and made several changes to the Commission's regulatory role. In 2007, the Commission amended its ethics rules to correct the statutory authority and the agency's name, both of which were changed by the PAEA. 72 FR 33164, 33165 (Jun. 15, 2007). In 2016, the Commission amended its ethics rules to redesignate the numbering to be consistent with the **Federal Register** Document Drafting Handbook and to correct the listed authority. 81 FR 42534, 42540 (Jun. 30, 2016). Neither amendment modernized the Commission's ethics rules to reflect the PAEA's enhancements to the Commission's responsibilities.

Because the ethics rules in existing 39 CFR subpart A of part 3000 are redundant to rules contained in title 5 of the Code of Federal Regulations, the Commission undertook this rulemaking to streamline its regulations. Order No. 3907 at 4-5. Further, the PAEA's changes to the Commission's responsibilities drive the need to modernize the ethics rules to ensure that consistent rules will apply to employees' and former employees' interactions with entities outside the federal government and with the Postal Service.

III. Comments

The Commission received two sets of comments pertaining to the proposed revisions to the supplemental standards of ethical conduct and the Commission's ethics rules.

Sum Comments. The Commission received the following comment through the *www.federalregister.gov* Web site: "Any deletion of ethical conduct would not be in the best interest of the American people due to transparency."³

PR Comments. The Public Representative supports the proposed revisions.⁴ He deems it "critical that the Commission's ethics rules accurately

³ Comment Received from Beth Sum, June 19, 2017 (Sum Comments). For transparency, this comment was posted to the Commission's website and associated with this docket.

⁴ Public Representative Comments on Notices of Proposed Rulemaking on Amendments to Ethics Rules and Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, June 26, 2017 (PR Comments). The Public Representative also filed a motion for late acceptance of his comments. Motion of Public Representative for Late Acceptance of Comments, June 26, 2017 (Motion). The Motion is granted.

reflect its role as a regulator and are reflective of the agency's procedures." PR Comments at 2. He concludes that the proposed revisions serve the public interest, reinforce public perception of the Commission's integrity, and increase accessibility and transparency. *Id.* He states that "the Commission's judgment that the standards applied to private firms should apply to the Postal Service is reasonable." *Id.* at 2-3. He also states that the proposed revisions help to "maintain the public's confidence that Commission staff are fulfilling their roles impartially." *Id.* at 2.

He observes that the proposed deletions are primarily editorial revisions made to delete duplicative and outdated sections. *Id.* at 3. He notes that the proposed deletions will not limit the ethical obligations of Commission employees. *Id.*

IV. Commission Analysis

Neither commenter suggested changes to the proposed rules. The Public Representative supports the proposed rules. *Id.* at 2-3. In response to the concern expressed in the Sum Comments, the Commission reiterates its commitment to upholding the highest ethical standards. As executive branch employees, Commission employees remain subject to several statutes governing conflicts of interests (see, e.g., 18 U.S.C. 201-219); the standards of ethical conduct appearing in Executive Order 12674, as amended by Executive Order

12731;⁵ and regulations promulgated by OGE relating to several issues, including financial disclosure, the standards of ethical conduct, and post-employment conflicts of interest (see, e.g., 5 CFR parts 2634, 2635, and 2641). Commission employees are also subject to the supplemental standards of ethical conduct, 5 CFR part 5601, which are also being revised to reflect the Commission's modern regulatory role under the PAEA and to remove duplicative and outdated provisions.⁶ The regulations at issue in this Order, the ethics rules applicable to Commission employees only, concern restrictions imposed upon Commission employees in addition to these laws and standards. The proposed revisions remain consistent with these laws and do not abrogate their application in any way. Streamlining the Commission's ethics rules supports OGE's mission to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct in accordance with Executive Order 12731. The proposed revisions will not lead to any reduction in the ethical obligations of Commission employees. Ultimately, the proposed revisions will enhance the Commission's adherence to ethical conduct by more accurately reflecting the Commission's modern regulatory role under the PAEA.

⁵ See Executive Order No. 12674, 54 FR 15159 (Apr. 12, 1989); Executive Order No. 12731, 55 FR 42547 (Oct. 17, 1990).

⁶ Order No. 4177, Order Amending Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, October 25, 2017.

Specifically, the Commission deletes the four rules in existing 39 CFR subpart A of part 3000, which are redundant to provisions contained in title 5 of the Code of Federal Regulations, as displayed in the following table:

Existing Subpart A of Part 3000	Description of the Existing Rule	Duplicative Provision Contained in Title 5
§ 3000.5	Cross-reference to employee ethical conduct standards and financial disclosure regulations	5 CFR 5601.101(a), as amended by Order No. 4177
§ 3000.10	Memorializing the duties of the Designated Agency Ethics Official (DAEO) for the Commission	5 CFR part 2638
§ 3000.15	Memorializing the prohibition against financial conflicts of interest	5 CFR 5601.102, as amended by Order No. 4177
§ 3000.20	Prohibited outside employment, prior approval to engage in outside employment, and disqualification when seeking non-federal employment	5 CFR 5601.104(a) and (b) and 5601.103(a), as amended by Order No. 4177

Further, as detailed in Order No. 3907, the Commission issues replacement rules that will improve transparency and the ability of Commission employees to adhere to the highest ethical standards. Specifically, these rules treat employees' and former employees' interactions with the Postal Service substantially the same as if those interactions were with entities that are not part of the federal government. As noted by the Public Representative, this will serve the public interest and reinforce public perception of the Commission's integrity with respect to the oversight of the Postal Service. See PR Comments at 2.

The Commission makes two editorial revisions. First, the Commission corrects the format of the cross-references to title 5 of the Code of Federal Regulations in proposed §§ 3000.10 and 3000.15.

Second, the Commission clarifies the text of proposed § 3000.10(a), relating to the obligation of Commission employees seeking employment with the Postal Service to provide written notice of disqualification to the DAEO. The Commission adds a cross-reference to reflect that this obligation supplements the requirement that Commission employees seeking non-federal employment provide written notice of disqualification to the DAEO. Also, the Commission adds a procedural sentence memorializing that the DAEO will inform the employee and the employee's supervisor in writing of each matter from which the employee is disqualified from participating. This clarifying revision will better ensure that the employee is disqualified from all applicable matters. For these reasons and those reasons detailed in Order No. 3907, the Commission adopts the proposed rules without substantial changes.

V. Ordering Paragraphs

It is ordered:

1. Subpart A of part 3000 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order effective 30 days after the date of publication of this Order in the **Federal Register**.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3000

Conflict of interests.

By the Commission.

Stacy L. Ruble,

Secretary.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

CHAPTER III—POSTAL REGULATORY COMMISSION

1. Under the authority of 39 U.S.C. 503, remove the heading of subchapter A.

PART 3000—STANDARDS OF CONDUCT

2. The authority citation for part 3000 continues to read as follows:

Authority: 39 U.S.C. 503; 504, 3603; E.O. 12674; 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396, 5 CFR parts 2634 and 2635.

3. Revise subpart A of part 3000 to read as follows:

Subpart A—General Provisions

Sec.

3000.5 Post-employment restrictions.

3000.10 Additional required notification of disqualification when seeking employment.

3000.15 Additional restriction on acceptance of anything of value.

3000.20 [Reserved]

§ 3000.5 Post-employment restrictions.

All former employees of the Postal Regulatory Commission (Commission) are subject to the following restrictions on appearance and practice before the Commission on behalf of any participant, including the United States Postal Service (Postal Service):

(a) No former employee of the Commission may practice or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee has handled, advised, or participated in the consideration of while in the service of the Commission.

(b) No former employee of the Commission may within 1 year after his or her employment has ceased, practice before or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

§ 3000.10 Additional required notification of disqualification when seeking employment.

(a) Notwithstanding 5 CFR 2635.603(a), an employee that seeks employment with the Postal Service must provide written notice of disqualification to the Designated Agency Ethics Official (DAEO) consistent with 5 CFR 5601.103(a). The DAEO will inform the employee and the employee's supervisor in writing of each matter from which the employee is disqualified from participating.

(b) An employee may withdraw written notice under paragraph (a) of this section consistent with 5 CFR 5601.103(b).

§ 3000.15 Additional limitation on acceptance of anything of value.

Regardless of 5 CFR 2635.203(b)(7), a Commission employee may not accept a gift from the Postal Service, unless another exception or exclusion to 5 CFR 2635.203 applies or a waiver is granted by the DAEO.

§ 3000.20 [Reserved]

[FR Doc. 2017-23576 Filed: 10/30/2017 8:45 am; Publication Date: 10/31/2017]